



Chemical Weapons Working Group

PO Box 467 Berea, KY 40403
(859) 986-7565 fax: (859) 986-2695
www.cwwg.org

Alabama

Burn Busters
Coosa River
Basin Initiative
Families Concerned
About Nerve Gas
Incineration
SAFE

Honorable Carol Browner
Administrator
U.S. EPA
401 M St.
Washington, DC 20460

Arkansas

Arkansas CWWG
Arkansas Public
Policy Panel
Pine Bluff for Safe
Disposal
WAND

Ms. Anne Goode
Director, Office of Civil Rights (1201A)
U.S. EPA
1200 Pennsylvania Ave. NW
Washington, DC 20460

Colorado

Citizens for Safe
Weapons Disposal
Sangre de Cristo
Group of the Sierra
Club

August 28, 2000

Dear Ms. Browner and Ms. Goode,

Indiana

Citizens Against
Incineration at
Newport
Newport Study
Group

I am submitting comments on behalf of the Chemical Weapons Working Group (CWWG) regarding the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*.

Kentucky

Common Ground
Concerned Citizens
of Madison County

The CWWG is a grassroots coalition working for the safe disposal of chemical weapons stored in the Pacific and the U.S. We are opposed to the U.S. Army's chemical weapons incineration program and instead promote safer, non-incineration technologies for disposal of these weapons of mass destruction. Each of the communities in which incinerators are currently operating or are being constructed is a community of color (either African-American, Native American, or indigenous Pacific) and is being disproportionately impacted by the facility. On the other hand, more affluent, Anglo communities are benefiting, or are likely to benefit, from non-incineration disposal technologies generally more favorable to the public.

Maryland

APG Superfund
Citizens Coalition
Coalition for Safe
Disposal
Concerned Citizens
for Maryland's
Environment

CWWG member groups and individuals at two chemical weapons sites, Anniston, Alabama and Pine Bluff, Arkansas filed Title VI complaints. Experiences with these complaints provide the context for our comments.

Oregon

GASP
Oregon
Clearinghouse for
Pollution Reduction
Oregon Sierra Club
Oregon Wildlife
Federation

1. The Anniston citizens' complaint was rejected by the Office of Civil Rights (OCR) because it arrived a day late. Upon filing an appeal to the complaint rejection, we found out that OCR had misplaced the complaint. Despite OCR's own error the appeal was denied. Construction of the incinerator is now near completion. In the time since OCR denied the appeal, the chemical weapons incinerator in Utah -- on which all other incinerators are modeled -- has experienced numerous near catastrophic events, including the repeated release of chemical warfare agent out of the smokestack and chronic worker exposures. At the same time, PCB contamination in Anniston's people of color and low-income communities has been found to be extensive. PCB levels for young Anniston children are some of the highest on record. The Alabama Department of Environmental Management (ADEM) is being challenged statewide for its inadequate attention paid to contamination levels in Anniston.

Utah

Families Against
Incinerator Risk
Utah Sierra Club
West Desert HEAL

Pacific

Pacific Asia Council of
Indigenous Peoples
Pacific Friends
Service Committee

Russia

Rainbow Keepers
Third Way Party
Union on
Chemical Safety

(partial list)

Environmental injustice runs rampant in Anniston; and EPA's OCR determined that the Title VI complaint was not worth its time because it arrived days late.

2. The complaint filed by CWWG member groups and individuals in Pine Bluff, Arkansas is pending review. In the years since that complaint was filed, the chemical weapons incinerator in the African-American city of Pine Bluff continues to be constructed. The Pine Bluff community is home to more than 20 industries which report toxic releases, and several paper mills known to release dioxins into the air. PCB contamination from Lake Pine Bluff remains a contamination source.

Environmental justice has not yet been served in Pine Bluff. Given OCR's track record, Pine Bluff residents have little reason to believe that justice will be served through the Title VI complaint process.

In this context, and by the principles of environmental justice, precautionary action and pollution prevention, following are our general comments on the Draft Guidance.

1. In general, we are disappointed in the overall nature of the Draft Guidance, and urge OCR to go "back to the drawing board." Determining complaints based on this Guidance will not serve the intent of civil rights legislation or President Clinton's Executive Order on Environmental Justice.
2. A great deal of ink is devoted to the discussion of "informal resolution" between affected citizen complainants and permit recipients. It is our experience that by the time a permit for a polluting facility has been issued, citizens have tried innumerable ways to resolve their problems. For these citizens and groups, to file a Title VI complaint is sometimes their last reasonable effort to gain the attention of EPA and other decision makers. The "informal resolution" language in the Draft Guidance does not reflect the serious nature of environmental injustice, and is insulting to individuals and groups who have worked for years attempting to protect their community members from continued contamination.
3. Regarding Timeliness of Complaints, the statement "OCR may waive the 180-day time limit for good cause" is so vague to be meaningless. We agree that complainants should strive to meet Title VI complaint guidelines. However rejecting a complaint for a barely-missed deadline, without spending even a minute's time reviewing the merits of the complaint, is itself unjust. Until OCR defines "good cause" in part by the merits of the complaint, or the logistical difficulty some citizens and groups have in filing a Title VI complaint; and until OCR can show that it has waived the deadline for such "good cause," the statement of deadline waiver will remain meaningless.

Furthermore, OCR should practice what it preaches. Until OCR becomes accountable for its years upon years of complaint backlog, and itself meets its stated intent to act promptly to these complaints, it should not reject a complaint submitted shortly after the 180-day deadline.

4. Regarding Ongoing Permit Appeals or Litigation, OCR's "sit back and wait" approach to a complaint regarding an issue already being appealed in court does nothing to serve environmental justice. Further, the section's statement "encourag[ing] complainants to exhaust administrative remedies available under the recipient's permit appeal process and foster early resolution of Title VI issues" again implies that complainants may simply not be trying hard enough to resolve our problems. This paternalistic language,

and OCR's positioning itself for inaction during permit appeal cases, perpetuate the cycle of discrimination and injustice so pervasive in our federal agencies and courts.


5. We appreciate the section on Resolving Complaints in that it reflects the principles by which our groups function: consensus building, conflict resolution, etc. However, while OCR's offer to help with mediation, alternative dispute resolution, and other forms of informal resolution may be helpful to some, we suspect that the vast majority of complainants own offers to resolve the environmental injustices in their communities have already been flatly refused by permit recipients; OCR's emphasis in this area may therefore be a waste of time. For example, a complainant calling for the denial of an operating permit, or in our case, retrofitting of an unsafe technology with a new disposal process, complainants will not be interested in cracking a compromise if such an agreement would compromise the health of the local community.

The approach outlined in this section seems to give more regulatory wiggle-room to permit recipients and less protective action to polluted communities.

6. Regarding the sections on Investigative Procedures and Adverse Disparate Impact Analysis, we strongly urge that EPA and OCR emphasize the Precautionary Principle, Pollution Prevention models and methods of Alternative Assessments. As long as citizens are burdened with proving harm from polluting industry; as long as industry is allowed to hide behind the shield of scientific uncertainty; as long as our federal agencies refuse to take action to prevent pollution rather than manage it; our children and future generations will continue to suffer needlessly from environmental injustice. OCR's stated reliance on "scientifically sound" analyses and studies, impact assessment factors and characterization of affected populations and comparison populations is more busy work and less action on blatant environmental injustices. Putting so much weight on these factors disempowers the same community members OCR is tasked with serving. The time sifting through this technical data could better be spent forcing polluting industry into clean production and safe waste disposal.

Alternately, a Draft Guidance which emphasized the above mentioned principles, and which used Alternatives Assessment as a way to determine safe waste disposal solutions would truly foster environmental justice.

Respectfully submitted,


Elizabeth Crowe
Chemical Weapons Working Group